

FCC MAIL SECTION

DOCKET FILE COPY
ORIGINAL

JUN 16 1 15 PM '93
Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 93-304

DISPATCHED BY

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act

Rate Regulation

MM Docket 92-266

Order

Adopted: June 11, 1993

Released: June 15, 1993

By the Commission:

I. Introduction

1. In this Order, we defer implementation of cable service rate regulation from June 21, 1993 until October 1, 1993,¹ and extend the "freeze" of regulated cable service rates from August 4, 1993 until November 15, 1993.² We additionally dismiss without prejudice petitions filed by Intermedia Partners ("Intermedia"), and the Coalition of Small System Operators and Prime Cable of Alaska, L.P. ("Coalition"), seeking a stay of implementation of cable rate regulation.

¹ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking ("Report and Order"), MM Docket 92-266, FCC 93-177 (released May 3, 1993), adopting regulations implementing Sections 623 (cable service rate regulation), 612 (commercial leased access), and 622(c) (subscriber bill itemization) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Those regulations are scheduled to become effective June 21, 1993.

² See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation ("Rate Freeze Order"), MM Docket 92-266, 8 FCC Rcd 2921, clarified, 8 FCC Rcd 2917 (1993). In that Order we established a freeze of cable service rates from April 5, 1993 until August 4, 1993.

II. Deferral of Implementation of Cable Service Rate Regulation

2. In the Report and Order, the Commission adopted a comprehensive regulatory framework for the implementation of cable service rate regulation as required by the Cable Act of 1992 that imposes significant new responsibilities on the Commission.³ These new responsibilities occur at a time when the Commission is already operating under a budget shortfall of \$18 million for Fiscal Year 1993. As a result of this shortfall, we are projecting a potential need to furlough all employees for up to five days during Fiscal Year 1993. In order to meet the additional responsibilities of the Cable Act of 1992, the Commission has worked closely with the Office of Management and Budget to estimate its additional resource needs and requested \$12 million in supplemental funding from Congress for Fiscal Year 1993. While our funding requests have made significant progress,⁴ Congress has not yet enacted a supplemental appropriation. In addition, when supplemental funds are appropriated, it may take an additional period of time for the supplemental appropriation to be effectively utilized by the Commission. Therefore, the Commission will be unable as of the current effective date of cable service rate regulation, to fully implement the rate regulation provisions of the Cable Act of 1992.⁵

³ For example, under the rate regulations adopted in the Report and Order, the Commission must, inter alia: print and distribute certification forms; process franchise certifications; review petitions for reconsideration and revocations of certification approvals; review showings by franchise authorities concerning their inability to regulate basic service rates; address cable operators' requests for effective competition data from competitors; process appeals from basic service rate determinations; regulate the basic service tier where local franchise authority certification is denied or revoked or where the authority is otherwise unable to regulate; print and distribute complaint forms for cable programming services; print and distribute Form 393, which cable operators will use to determine initial regulated rates; adjudicate complaints regarding cable programming services by reviewing benchmark and cost-of-service showings; publish and distribute forms used to determine external costs; review external cost showings; and adjudicate leased access rate complaints.

⁴ On June 8, 1993, the Senate Appropriations Committee approved \$11.5 million in supplemental funding for the Commission.

⁵ We observe that in response to the Cable Act of 1992, we have initiated and/or completed numerous proceedings to prescribe regulations necessary for the implementation of the Act. By the end of this month, the Commission will have completed promptly and on schedule 32 formal actions under the Act, e.g. Notices of Proposed Rulemakings, Reports and Orders, clarifications. To

3. In addition, we believe that an additional period of time for implementation of cable service rate regulation will provide franchising authorities and cable operators greater opportunity to ensure a smooth transition to rate regulation. We recognize that rate regulation of cable service imposes significant new obligations on cable operators. In addition, cable systems will be taking a series of steps to notify subscribers of the changes being implemented under these regulations, and we continue to be concerned that these notices be given sufficiently in advance to minimize confusion and service disruption.⁶ We believe that an additional period of time afforded to cable operators to establish compliance with rate regulation requirements, including any necessary rate reductions, and to prepare and disseminate subscriber notices, will promote the purposes of the Cable Act of 1992 and facilitate the transition to rate regulation of cable service. An additional period of time prior to full implementation of cable service rate regulation will also afford local franchise authorities a further opportunity to prepare for exercise of their rate regulation responsibilities.

4. Accordingly, on reconsideration on our own motion of the effective date set forth in the Report and Order, we will defer the effective date of our cable service rate regulations until October 1, 1993.⁷ This deferral will apply to all regulations adopted in the Report and Order.⁸ Thus, the Commission will not

finish implementation of this law, we estimate that we will have to complete at least 27 more formal actions in the next few months.

⁶ Continental Cablevision, Inc. has filed a petition requesting a clarification as to whether cable operators may make retroactive charges and credits for the first full billing cycle occurring after the effective date of the Commission's rate regulations. Petition for Clarification or Reconsideration of Order of May 14, 1993, filed May 20, 1993 by Continental Cablevision, Inc. This petition raises issues that the Commission may need to address in connection with implementation of rate regulation on October 1, 1993. Therefore, the Commission is continuing to consider the Continental petition.

⁷ Under 47 C.F.R. Section 1.108, the Commission may, on its own motion, reconsider and set aside any Commission action taken within thirty days from the date of public notice of the action. See 47 U.S.C. Section 405. Public notice of our rate regulations was published on May 21, 1993. 58 Fed. Reg. 29736 (May 21, 1993). See also 47 C.F.R. Section 1.4(b)(1).

⁸ See footnote 1, *supra*. The Commission will issue a separate order modifying those rate regulations (e.g. refund liability for basic and cable programming services) that include dates based on

accept until October 1, 1993 certifications by local franchising authorities to regulate the basic service tier or complaints invoking the Commission's regulatory oversight over cable programming service rates.⁹ During this deferral period, we will continue to work with Congress to assure adequate funding for implementation of the Cable Act of 1992.¹⁰

III. Extension of the Rate Freeze

5. In the Rate Freeze Order, we froze until August 3, 1993 rates for cable service, other than premium channels and pay-per-view services, provided by systems subject to rate regulation under the Cable Act of 1992. We stated that we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services, cable operators could raise rates. This could effectively undermine the statutory requirement that the Commission assure that rates for cable service are reasonable.¹¹ Given our deferral of the effective date of the rate regulations until October 1, 1993, we remain concerned that cable operators could unreasonably raise rates after the current expiration date of the freeze. Thus, in order to protect consumers during the period that we are deferring implementation of the cable rate regulations, we are extending the freeze established in the Rate

the June 21 effective date to conform to the new effective date. The effective dates of other regulations implementing the Cable Act of 1992 remain unchanged.

⁹ Refund liability for the basic service tier will extend from the date the operator implements a prospective rate reduction back to October 1, 1993, or one year, whichever is shorter. For a cable programming services tier, refund liability will extend from the date the operator implements a prospective rate reduction back to the date a complaint was filed concerning the rate for the tier. The Commission will begin accepting such complaints on October 1, 1993.

¹⁰ In Implementation of Sections of the Cable Television and Consumer Protection Act of 1992, Rate Regulation, Order, MM Docket No. 92-266, FCC 93-264, released May 14, 1993, we denied a request for stay until August 3, 1993 of implementation of rate regulation filed by the National Cable Television Association. At that time, the Commission believed that the additional resources necessary to implement the Cable Act of 1992 could be available by June 21, 1993, or very shortly thereafter, to permit implementation of cable rate regulation on that date.

¹¹ Rate Freeze Order, para. 3.

Freeze Order through November 15, 1993.¹² This extension will provide sufficient time, as a legal and practical matter, for local franchising authorities to become certified to regulate the basic service tier and for consumers to be able to exercise their rights to invoke Commission oversight over cable programming services.¹³ During the period of this freeze we will entertain petitions for emergency relief from cable operators who make detailed and particularized showings that the freeze would impose severe economic hardships or threaten the viability of continued cable service. We will endeavor to act on such petitions expeditiously.

IV. Intermedia and Coalition Requests for Stay

6. Coalition requests a stay of rate regulation pending reconsideration of the Commission's benchmark approach to rate regulation of cable service and the final promulgation of cost-of-service standards. Intermedia also requests the Commission to stay implementation of rate regulation pending adoption of cost-of-service standards. In view of our determination to defer implementation of cable service rate regulation until October 1, 1993, we do not find it necessary to address at this time the Coalition and Intermedia requests for stay of implementation of cable service rate regulation. Accordingly, we will dismiss without prejudice the Coalition and Intermedia petitions.

V. Ordering Clauses

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), (j), and 405, and Section 1.108 of the Commission's rules, 47 C.F.R. Section 1.108, that the Commission's rules adopted in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking ("Report and Order"), MM Docket 92-266, FCC 93-177 (released May 3, 1993), SHALL BE EFFECTIVE October 1, 1993.

8. IT IS FURTHER ORDERED, that the freeze of cable service rates established in Order, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, 8 FCC Rcd 2921, clarified, 8 FCC Rcd 2917 (1993) IS EXTENDED until November 15, 1993 and that effective

¹² We observe that Intermedia and Coalition both state that the rate freeze properly could be extended in conjunction with their proposed stay, of cable service rate regulation. Coalition Petition for Stay, p. 15; Intermedia Petition for Stay, p. 21.

¹³ This freeze is applicable to the basic service tier, the cable programming service tier (or tiers), and provision of regulated equipment.

30 days from publication in the Federal Register, Section 76.900(a) of the Commission's rules IS AMENDED as set forth in Appendix A.

9. IT IS FURTHER ORDERED, that the petitions for stay filed by Intermedia Partners and Coalition of Small System Operators and Prime Cable of Alaska, L.P. ARE DISMISSED WITHOUT PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Donna Searcy
Secretary *WTC*

APPENDIX A

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 76.900(a) is revised to read as follows:

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until November 15, 1993.